

System: 165.135.210.45 sec fax,sec, 4181087 --- Time Printed: 01-04-2006 10:24:14

From: 2164324632  
Media: Fax 9 pages  
Subject:  
Status:  
Received: 12:50 PM 12/30/05

DOCKET FILE COPY ORIGINAL

RECEIVED & INSPECTED  
DEC 30 2005  
FCC - MAILROOM

No. of Copies rec'd 0  
List A B C D E

**fax**

Woodland Data Center  
Dept of Information Services  
eRate Division

To: Federal Communications Commission

Fax: 202-418-0187

From: Ilze K Lacis 

Total Pages: 10 (incl cover)

Date: 30 December 2005

Subject: Waiver Request – Erate Program

RECEIVED & INSPECTED

DEC 30 2005

FCC - MAILROOM

**Message:**

I filed a Waiver Request using the FCC's ECFS tool, regarding a Funding Request from the Erate Program. I have not received an emailed confirmation for the Waiver filing.

While I regret the duplication, I am faxing the Waiver Request herewith.

**Confidentiality Notice**

*The documents accompanying this fax transmission contain confidential information belonging to the sender which is legally privileged. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying or distribution or the taking of any action in reliance on the contents of this faxed information is strictly prohibited. If you have received this fax in error, please immediately notify us by telephone to arrange for the return of the original documents to us.*

*If you did not receive all of the pages as noted, please call 216-432-4619*

**Before the  
Federal Communications Commission  
Washington, D.C.**

In the matter of:

Application for Review by the  
Cleveland Municipal School District  
Of a decision of the Universal Service  
Administrative Company

Federal State Joint Board on  
Universal Service

)  
)  
)  
)  
)  
) CC Docket No. 96-45  
) CC Docket No. 02-6  
)  
)

RECEIVED & INSPECTED

DEC 30 2005

FCC - MAILROOM

Universal Service Administrative Company Decision on Appeal Dated October 15, 2004  
Fax copy of Appeal Decision Letter Dated October 31, 2005  
Letter of Appeal for Funding Commitment Denial for FY 2003  
Form 471 Number: 380114  
Funding Request Number: 1045303  
Billed Entity Number: 129482  
Applicant Name: Cleveland Municipal School District, f.k.a. Cleveland City School  
District

**Request for Waiver**

---

The District respectfully requests the Federal Communications Commission ("FCC") to waive the 60-day response period due to special circumstances for which a deviation from the rules would serve the public interest, e.g. the Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD"). The waiver is requested so the District could file a timely appeal to the Federal Communications Commission regarding the Administrator's Decision to deny an appeal by the District for FRN 1045303. The Administrator did not send or notify in any way the SLD's decision letter to the District's Erate Contact, Ilze K. Lacis. This Waiver Request is within 60 days of receiving a faxed copy of the original decision letter on October 31, 2005. As noted on the SLD Web site: "Any appeal must be filed within 60 days of the issuance of the

No. of Copies rec'd \_\_\_\_\_  
List A B C D E

decision from USAC and must be postmarked within 60 days of that date.” The District contends that the 60-day response period went into effect upon receipt of the faxed copy of the Administrator’s decision letter on October 31, 2005. The District very clearly indicated on its original appeal letter to the SLD the E-rate contact’s name, address, telephone number, fax number, and email address. The Administrator has placed the District in a very special circumstance that no amount of planning could have forestalled.

The District submitted to the Schools and Libraries Division (“SLD”) of the Universal Service Administrative Company (“USAC”, “Administrator”) on May 8, 2003 a Letter of Appeal for Funding Request Number (“FRN”) 380114. During a telephone conversation with Paul Stankus of the SLD on October 31 (Halloween Day), 2005 at 3:30 p.m. Ilze Lacis, the District’s contact for E-rate, asked Mr. Stankus to check the status of the District’s appeal for FRN 1045303. It was quite normal that a significant amount of time had passed without receipt of notice from the SLD regarding the District’s appeal letter, since the SLD had taken as long or longer to respond to other appeals. In the telephone conversation, Mr. Stankus told Ilze Lacis that the Administrator had denied the District’s appeal. This at first seemed a harsh Halloween trick. It was the first and only instance that the District’s E-rate contact heard, or knew, that the Administrator had taken any action on the appeal. Mr. Stankus faxed the Decision on Appeal letter at 3:57 p.m., immediately following the telephone conversation on October 31, 2005. This was the first such notice that the District’s contact had received regarding this appeal. The Administrator’s letter carried the date of October 15, 2004. The District asserts that this is a special circumstance created by the Administrator and to which the District had no control, i.e. planning, to prevent.

The faxed copy of the Administrator's letter showed that the Decision on Appeal letter was sent to Peter A. Robertson, Cleveland Municipal School District, 1380 East 6<sup>th</sup> Street, Cleveland, Ohio 44114. Mr. Robertson, formerly the District's Chief Information Officer, was no longer employed by the District at that time. Detailed contact information is requested when filing an appeal. The District's original March 10, 2003 Letter of Appeal to the SLD clearly noted that the E-Rate Contact for the District is Ilze K. Lacis, 4966 Woodland Avenue, Cleveland, Ohio 44104. It is obvious that the addresses are very different. In numerous other correspondence, irrespective of the signatory or authorizing individual, the SLD has addressed all correspondence to the District's Erate contact. This Administrator's letter is an anomaly and is particularly disconcerting since the FRN in question is important to the District's technology plans. It is vital that the District be able to appeal the Administrator's decision to the FCC, since the District can demonstrate clearly that the SLD was wrong to deny the appeal for FRN 1045303.

The District adheres to FCC rules and regulations for the Erate program. In this instance, however, the FCC must waive the 60-day response rule due to the SLD not notifying the District's E-rate Contact.

Respectfully submitted,



Ilze K. Lacis  
Manager, Erate Program/Telecom  
4966 Woodland Avenue,  
Cleveland, OH 44104  
Tel: 216 432 6240;  
Fax: 216 432 6240  
[Lacisil@cmsdnet.net](mailto:Lacisil@cmsdnet.net)

Attachments:

October 31, 2005 faxed copy of Decision Letter (two pages)  
Original Letter of Appeal to SLD, dated March 10, 2003 (three pages)

**Attachment of October 31 faxed letter of Administrator's Decision on Appeal Letter**

Oct-31-2004 03:57pm From-USAC

2022897836

T-002 P-001/002 F-003

**Universal Service Administrative Company**  
Schools & Libraries Division**Administrator's Decision on Appeal - Funding Year 2003-2004**

October 15, 2004

Peter A. Robertson  
Cleveland Municipal School District  
1380 East 6<sup>th</sup> Street  
Cleveland, Ohio 44114

Re: Billed Entity Number: 129482  
471 Application Number: 380114  
Funding Request Number(s): 1045303  
Your Correspondence Dated: March 10, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision regarding your appeal of SLD's Year 2003 Funding Commitment Decision for the application number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one application number, please note that for each application an appeal is submitted, a separate letter is sent.

**Funding Request Number:** 1045303  
**Decision on Appeal:** Denied in full  
**Explanation:**

- On appeal, you seek reversal of the SLD's decision to deny this funding request because it contains greater than 30% ineligible products or services. You contend that the SLD has applied the 30% rule erroneously by using the cost of ineligible software applications and applying the configuration, installation, and management costs of eligible hardware to these applications. You state that the hardware requested is necessary for a wireless LAN implementation and that the equipment is not dependent on the software. You have included an amended version of your original response to Program Integrity Assurance (PIA) to support your appeal.
- Upon thorough review of the appeal, and its relevant documentation, it has been determined that this funding request was properly denied by the SLD. During PIA review you were asked to cost allocate the charges for configuration/installation, design/engineering, and project management for the Cisco Aironet WLSE and Cisco Secure ACS 3.0 for Windows products. Your response

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981  
Visit us online at: <http://www.usac.us>

Oct-31-2006 03:57pm From:USAC

1327897036

T-002 P.002/002 F-005

included a letter from the service provider (IBM) indicating that \$2,243,131.00 of the charges was associated with these products. This response also indicated that the Cisco Secure ACS 3.0 was required for the project to work. As the ineligible products and services equaled 62.47% of the funding request, the FRN was denied. On appeal you have included an amended response stating that the disputed charges are for the hardware associated with the Cisco Aironet WLSE and Cisco Secure ACS 3.0 for Windows products. Further, you argue that the requested hardware is not dependent on the ineligible software. However, this information contradicts the documentation that you originally provided. Consequently, this information cannot be considered on appeal. As you have failed to provide evidence that the SLD has erred in its original decision, the appeal is denied.

- Your Form 471 application included costs for the following ineligible products and/or services: Cisco Aironet WLSE, Cisco Secure ACS 3.0 for Windows, and associated charges for configuration/installation, design/engineering, and project management. FCC rules provide that discounts may be approved only for eligible products and/or services. 47 C.F.R. §§ 54.502, 54.503. The USAC web site contains a list of eligible products and/or services. See the web site, [www.sl.universalservice.org](http://www.sl.universalservice.org), Eligible Services List. FCC rules require that if 30% or more of an applicant's funding request includes ineligible products and/or services, the funding request must be denied. 47 C.F.R. § 54.504(c)(1). 62.47% of your funding request was for ineligible products and/or services. Therefore, your funding request was denied. You did not demonstrate in your appeal that your request included less than 30% for ineligible products and/or services. Consequently, SLD denies your appeal.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division  
Universal Service Administrative Company

Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, New Jersey 07981  
Visit us online at: <http://www.sl.universalservice.org>



**Attachment of original Letter of Appeal to the SLD, March 10, 2004 (3 pages)**

Department of Information Services  
966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • www.cmsdnet.net  
SLD Funding Denials / FY 2003-2004  
10 March 2004

TO: Letter of Appeal  
Schools and Libraries Division  
Universal Services Administrative Corporation  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

RE: Letter of Appeal for Funding Commitment Denial for FY 2003

|                             |  |                                |
|-----------------------------|--|--------------------------------|
| Billed Entity Number        | 129482   | Cleveland City School District |
| Form 471 Application Number | 380114   |                                |
| Funding Request Number      | 1045303  | Wireless LAN                   |
| Services Ordered            | Internal Connections   |                                |
| Pre-Discount Amount         | \$3,635,685.24   |                                |
| SPIN                        | 143005607  | IBM, Corp                      |
| FCDL                        | January 20, 2003   |                                |
| Funding Year 2003           | 07/01/2003 - 06/30/2004                                      |                                |
| Funding Commitment Decision | 30% or more of this FRN includes a request for Cisco Secure  |                                |
| Explanation                 | ACS 3.0 for Windows and Aironet WLSE and associated          |                                |
|                             | services, which is an ineligible product(s)/service(s) based |                                |
|                             | on program rules.  |                                |

FROM: Cleveland Municipal School District  
Peter A Robertson, Chief Information Officer  
1380 East 6<sup>th</sup> Street  
Cleveland Ohio 44114

E-Rate Contact: Ilze K. Lasis  
4966 Woodland Avenue  
Cleveland, OH 44104  
Tel: 216 432 6240  
Fax: 216 432 4632  
Lasisil@cmsdnet.net

**INTRODUCTION**

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation (USAC) to review the SLD Funding Commitment Decision, dated January 20, 2004 regarding Funding Request Number 1045303 requested in Form 471 Application Number 380114.

The SLD based the denial on Section 54.504(c)(1) of the Federal Communication Commissions Second Report and Order and Further Notice of Rulemaking, which states " (c) (1) *Mixed Eligibility Requests*. If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety." The Cleveland Municipal School District respectfully contends that the SLD applied the "30% rule" incorrectly by using the cost of two ineligible software applications and applying the configuration, installation and management cost of the hardware to the software applications. The ineligible software applications are less than 1% of the funding request.

1



**BASIS OF APPEAL: The SLD applied the "30% Rule" incorrectly.**

The Cleveland Municipal School District prepared and timely filed the FCC Form 471 for a Wireless LAN with IBM Corp. as the service provider. The total requested for the Wireless LAN was \$3,535,885.24. Of that amount, two items (Cisco Secure ACS 3.0 for Windows and Aironet WLSE) listed in "Appendix C - Hardware and Software Provided" in the Item 21 Attachment for FRN-1045303 total \$28,041.70. ("Appendix C..." is Attachment A in this Appeal Letter.) These two items listed in the Appendix are software applications, and, rightfully, should have been noted as ineligible items in the funding request. This clearly was an oversight and we agree that this amount should be deleted from the total amount requested, i.e. of the originally requested amount of \$3,535,885.24, less \$28,041.70 for the two software items, equals \$3,507,843.54 as the eligible funding request amount. This is less than 1% of the requested, undiscounted amount.

Furthermore, in Attachment B of this Appeal Letter is IBM's response to a Performance Integrity Audit (PIA) question, to which the District responded on December 11, 2003. The PIA question was: "How much of the \$1,322,757 for configuration and installation, of the \$513,674 for Design and Engineering, and the 406,800 for project management is associated with the Aironet WLSE product? with the Cisco Secure ACS 3.0 for Windows product?"

At the beginning of the letter, addressed to Ibez Kainina Lucis, the District's Erate manager, IBM describes the functionality of the ACS (Access Control Server - security authentication) and the Aironet WLSE (Wireless LAN Solution Engine - remote management) applications for the Wireless LAN system. IBM's letter continues to delineate the time it will take for a two-person technical installation team to install the wireless LAN hardware equipment, also noted in the "Appendix C..." of the Item 21 Attachment (Attachment A). This clearly explains the service provider's estimation of the cost to install the wireless LAN hardware, and does not refer to the (ineligible) applications. The total for the hardware is \$894,650.40. Explanations for the hardware equipment are as follows (see Attachment A):

- (a) AIR-AP12206-A-K9 - This is an 802.11b Access Point. By definition from the SLD's Website "An Access Point provides for wireless networks what cabling provides for wired networks. Therefore, access points are "an essential element in the transmission of information within the school or library."
- (b) AIR-ANT2012 - This is an antenna for the access point listed above. From the SLD's Website "Antennas provided as part of Wireless Local Area Networks (LANs) are eligible for discounts if they are separately priced on a contract or are sold separately."
- (c) AIR-PSJN15S1200 - These are the power supplies for the access points. The devices will not work without them, so by default, they are eligible.

IBM continues in its letter and states "There are roughly 130 sites for a total of 1950 hours per person for Configuration and installation. ... However, it is the design verification of the system that ensures proper functionality (sic), which includes the necessary customization for each site, which takes time. This is the '2 hours for security configuration' average per site that was specified above." This clearly refers to the configuration, installation and project management of the hardware, and not the ACS and WLSE applications.

Continuing in the PIA response letter, IBM notes that, "It was IBM's understanding that CMSD would be responsible for installing the Access Control Server (ACS). 'Installation' of ACS only takes a few minutes, plus maybe a couple of hours to get a box set up to install." This was correctly stated by IBM, and the District will be responsible for this installation, precisely because it is ineligible equipment. This, again, clearly indicates that these two items questioned in the PIA are not included in the costs assigned to the configuration and implementation of the wireless LAN for the District.

It is regrettable that in the final paragraphs of the letter responding to the PIA, IBM should have stated clearly that the costs noted are for the hardware, and not in any way for the software. However, it is amply clear from all of the aforementioned items, both in this appeal and IBM's PIA letter, that the costs